

THE BUTE TRAGEDY.

INSANITY DEFENCE HINTED.

The Medical Evidence.

The hearing of a charge of murder preferred against Herman Edward Harvey (31) in connection with the death of his wife and child at Bute on June 27 was resumed before Mr. Justice Poole and a jury in the Criminal Court on Wednesday. The cross-examination hinted at a defence of temporary insanity caused by war services, and gassing.

There were many spectators when the hearing was resumed. Mr. E. Millhouse appeared for the Crown, and Mr. H. W. Uffindell, with Mr. H. A. Shierlaw, defended.

The Medical Evidence.

Dr. W. H. C. Carden stated that he was called to the spot where Harvey was lying on the ground. He was semi-conscious, and was suffering from a bullet wound in the jaw. He had bled considerably before his (witness's) arrival. His opinion was that the wound was self-inflicted. He went to Harvey's house; he found Mrs. Harvey lying on the floor in a pool of blood. Beside her was the dead body of an infant. Mrs. Harvey had a wound in the middle of her forehead about half an inch above the level of the eyebrows. At the back of the head was a lacerated wound about an inch and a quarter in diameter. While he was examining Mrs. Harvey a piece of lead dropped into his hand. He also found an empty cartridge shell on the floor. The kitchen table was spread, as for a meal, and there was also a bundle of letters lying there. When he arrived at the house Mrs. Harvey's body was still warm, and he thought death would have occurred about an hour before. There was a considerable amount of blood on the floor, but the wounds in the head had stopped bleeding. He thought that death would have been instantaneous. Mrs. Harvey was dressed in clean underclothing, but was without her dress and hat. His opinion was that the wounds could not have been self-inflicted. He did not think a woman of Mrs. Harvey's physique could hold a rifle to her head sufficiently firmly to prevent the formation of powder marks from the wound. He thought the shot must have been fired from at least 4 ft. away. When he found Mrs. Harvey, she was lying with

her face to the ground and her hands underneath her, and it had struck him that a person falling forward would have put her hands in front of her to protect her face on falling. The baby was lying semi-prone on the floor, half turned over on its left side and with its face half turned toward the couch. The child was dead, with a small round punctured wound a quarter of an inch in diameter in the centre of the right cheek, and the skin surrounding the wound was punctured with powder. In the scalp behind there was an irregular lacerated wound. They were gunshot wounds. Beneath the baby's head there was a piece of lead lying on the carpet, which had a hole in it. There was also a depression in the cement floor immediately beneath where the bullet was found. The powder marks on the baby's cheek showed, in his opinion, that the shot was fired from within 4 ft. of the child's face. He found no other bullets than the two mentioned, and no firearms, in the room.

Continuing, Dr. Carden stated that that night Harvey was taken to Wallaroo Hospital, where Dr. Harbison took charge of him. On the following day he conducted a post-mortem examination of Mrs. Harvey. The wounds were the only marks of violence on the body. With the exception of a slight touch of tubercular in the right lung, the other organs of the body were healthy. The wounds on both Mrs. Harvey and the baby could have been made by the gun in Court.

Insanity Hinted.

Dr. Carden told Mr. Shierlaw that Harvey had the reputation of being a quiet, inoffensive man. He and his wife appeared to be very fond of one another.

Assuming that Harvey had been severely gassed at the war, might the effects of that gassing still affect him? enquired Mr. Shierlaw. "Yes," replied the witness.

And the gas might affect him for years?—Yes.

And there might be effects come about years after of which the medical profession have yet to learn?—Yes.

And might the effects of gas at the war affect the man's mind to-day?—The effects of gas are more physical than mental. My experience is that the gas affects the stomach and causes ill health and the ill health might affect the brain.

And might a man apparently have got over the effects of gassing, and yet the effects of it might have become apparent this year?—That is possible.

And would three or four years' service at the war tend to make a man nervy?—Yes.

Which affects his brain?—Yes.

Assuming that a man was gassed at the war, and after three years' service had become a nervous man and that one day and having had drinks, assuming that man was apparently himself on the day in question, and that no motive or provocation of any kind was shown for his taking the life of his wife and little child with a rifle similar to the one in Court; and further assuming that man afterwards was in conversation with another man on a matter of business, apparently quite normal, would you say, in those circumstances, that the man I have instanced would be possibly or probably insane?—I think that

that the man I have instanced would be possibly or probably insane?—I think that the years of war service would put that man into the position you describe, but I do not think gas would have done it. He added he thought a man in the circumstances related by Mr. Shierlaw, would probably be insane.

The probability was that the man was insane?—Yes.

Assuming that man had no recollection whatever of those happenings, would that further tend in the direction of showing he was unaware of what he was doing at the time?—Yes.

Therefore those acts might have been done without a man being conscious, subsequently, of having performed them?—Yes.

And it would be a further indication of insanity?—Yes. Such a state could be caused by post-epileptic insanity when the actions would be automatic, and the acts would not be remembered afterwards.

A man sometimes becomes insane, and almost immediately afterwards becomes sane again—what is medically termed a brain storm?—Yes.

Might a man in that brain storm take the life of some one near and dear to him, recover, and then have no idea that he has taken life?—Yes.

Dr. Carden admitted that he thought a person could sit on a couch, place the butt of a gun on the ground, and discharge it so as to commit suicide.

Re-examined by Mr. Millhouse. Dr. Carden stated that during the past four years the accused had not consulted him as to the effects of gas. He was a highly strung man, and one who was easily depressed and worried. He doubted, if a man were insane at the time a murder was committed, whether he could conduct a rational and intelligent conversation within an hour of the occurrence.

In reply to His Honor the witness said he would like to modify a previous statement in his evidence, and say that, assuming a man were insane at the time he killed his wife and baby, he might be able, about an hour afterwards, to lead a horse down a lane and discuss ordinary topics rationally with a stranger on the road.

Dr. William Henry Harbison, of Wallaroo, deposed that the accused was admitted to the local hospital on the evening of June 27. The matron handed the witness a cartridge, which he gave to Constable Fox.

The Constable's Evidence.

M.C. Fox, of Bute, described his first visit to the home of the accused on the day of the tragedy, and the finding of the bodies of Mrs. Harvey and the infant. Things generally in the kitchen were in order. Both bodies were almost fully clothed. The witness found an empty cartridge case on the floor of the kitchen. Dr. Carden was at the house, and remained there until the witness secured the coroner. He identified a rifle and hat, which he found at a spot where the accused had been shot. Witness visited the accused at the Bute Hospital, and spoke to him, but he made no reply. Witness then charged the accused with the murder of his wife and child. On the

following day he found an empty cartridge case a few feet outside the back porch at accused's home.

In reply to Mr. Shierlaw the witness said the accused appeared to be half-conscious at the Bute Hospital. The accused's home was exceptionally clean. He appeared to be a very quiet man. The witness had known nothing detrimental to his character.

Dr. Downey Examined.

Dr. Michael Henry Downey, medical superintendent of the Parkside Mental Hospital, was called.

The Crown Prosecutor asked the witness to assume the case of a man in whom no insanity had previously been discovered, being apparently normal at 1.30 on a particular day, and who within an hour killed his wife and child, for whom he had affection, with apparently no motive, and an hour later held intelligent and rational conversation on a business matter with another man. Assuming also that he was temperamentally highly strung, could insanity be presumed?

The witness said he would not care to presume it under the circumstances mentioned. If a man had a homicidal mania and killed his wife and child whom he loved, when informed of the fact and charged with the murder he would certainly show strong emotion. After an epileptic seizure a man might commit a crime and not remember the details. One could only detect a chronic epileptic. A man who was highly strung would be more liable to give way to fits of anger than one not so highly strung. He might have his power of control lowered.

In reply to Mr. Shierlaw the witness said a brain storm, or period of intense excitement, could not be so severe as to prevent a man realizing the nature of the act that he was committing. Observation between attacks would not enable one to determine whether a man was an occasional epileptic.

The hearing was adjourned.

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